

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 793 of 2019

IN THE MATTER OF:

M/s. Baba Jagta Shuttering Store **...Appellant**

Vs.

PND Infrastructure Pvt. Ltd. & Anr. **...Respondents**

Present: For Appellant: - Mr. Sandeepan Pathak and Mr. Sumit Kumar Gaur, Advocates.

For Respondents: - Mr. Nikunj Hurria and Mr. Kanishk Khetan, Advocates for Resolution Applicant.

O R D E R

16.08.2019— This appeal has been preferred by the Appellant ('Operational Creditor') against the order dated 12th June, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata, whereby different objections have been raised by the parties under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short). Thereafter, the application under Section 31 filed by the 'Resolution Professional' was allowed by approving the 'Resolution Plan' submitted by the 1st Respondent-'PND Infrastructure Private Limited'.

2. This appeal has been filed after a long delay but in the petition for condonation of delay, it is stated that the Appellant became aware of the

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order on 24th July, 2019 and thereby, there is a delay of 15 days. Though such statement is not based on any evidence but without doubting the statement, on hearing the learned counsel for the Appellant and learned counsel for the 'Resolution Professional', we condone the delay of 15 days in preferring the appeal. I.A. No. 2407 of 2019 stands disposed of.

3. Learned counsel for the Appellant submits that the 'Resolution Applicant' was barred under Section 29A of the 'I&B Code' being a Director of the 'Corporate Debtor'.

4. Learned Counsel for the 'Resolution Professional' submitted that though the 'Successful Resolution Applicant'- 'PND Infrastructure Private Limited' was not the Director but a company under the Companies Act, 2013.

5. Learned counsel for the Appellant submits that one of the Directors of 'PND Infrastructure Private Limited' was also the Director of the 'Corporate Debtor' namely— 'M/s. KND Engineering Technologies Limited'. However, no such pleading has been made nor such ground has been taken by the Appellant and the person is also not a party Respondent.

6. On the other hand, according to counsel for the 'Resolution Professional', the common Director was not a related party and did not

come under any of the clauses under Section 29A of the 'I&B Code' and therefore, 1st Respondent cannot be held to be ineligible under Section 29A.

7. This apart, we find that such objection was not taken by the 'Operational Creditor' at the time of the approval of the plan, though a large number of applications under Section 60(5) of the 'I&B Code' were filed by different parties.

8. As we find no case has been made out, the appeal is dismissed. No cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice A.I.S. Cheema)
Member(Judicial)

(Kanthi Narahari)
Member(Technical)

Ar/g